

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

VERNON WAYNE McNEAL,

Plaintiff,

v.

LOCKIE, ERVIN, CHATHAM, and
VAN LEER,

Defendants.

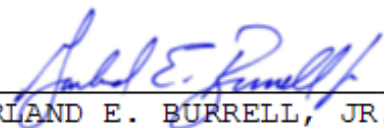
No. 2:05-cv-00441-GEB-EFB

**ORDER DENYING DEFENDANTS'
REQUEST TO MODIFY THE SECOND
SUPPLEMENT TO PRETRIAL ORDER**

On June 18, 2015, Defendants filed an "Objection to the Court's Second Supplement to Pretrial Order," in which they request the order "be modified" to state "that the remaining claims asserted against the Defendants at trial are as follows: 1) Excessive force in violation of the Eighth Amendment (against Defendants Leckie and Ervin); [and] 2) Failure to intervene to prevent the use of excessive force (against Defendants Chatham and Van Leer)." (Defs.' Obj. 2:13-19, ECF No. 221.) In essence, Defendants seek the removal of Defendant Chatham from the first claim, i.e., excessive force in violation of the Eighth Amendment, arguing the Magistrate Judge's January 18, 2013 findings and recommendations on certain Defendants' summary judgment motion adjudicated that claim in Defendant Chatham's favor. (Id. at 1:27-2:12.)

1 Defendants neither address the legal standard that
2 applies to their request to modify a final pretrial order, nor
3 demonstrate that it has been met. See Galdamez v. Potter, 415
4 F.3d 1015, 1020 (9th Cir. 2005) ("[The moving party] ha[s] the
5 burden of showing that an amendment to the pretrial order was
6 necessary to prevent 'manifest injustice.'" (citing Fed. R. Civ.
7 P. 16(e))). The Magistrate Judge's January 18, 2013 findings and
8 recommendations, which were adopted in full by the undersigned
9 judge on July 8, 2013, deny Defendants' summary judgment motion
10 as to Defendant Chatham altogether; they do not adjudicate a
11 particular claim alleged against Defendant Chatham in his favor.
12 (See January 18, 2013 F.&R. 15:21-16:2, ECF No. 145; Order
13 Adopting F.&R. 2:10-13, ECF No. 158.) Therefore, Defendant's
14 request to modify the Second Supplement to Pretrial Order is
15 DENIED.

16 Dated: July 7, 2015

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20 GARIAND E. BURRELL, JR.
21 Senior United States District Judge
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